

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 James E. Hill,

5 Plaintiff

6 v.

7 Julie Williams, et. al.,

8 Defendants

Case No. 2:24-cv-00571-JAD-MDC

**Order Dismissing  
and Closing Case**

9 Plaintiff James Hill brings this civil-rights lawsuit to redress constitutional violations that  
10 he claims he suffered while incarcerated at High Desert State Prison. On July 23, 2024, this  
11 court dismissed plaintiff's claims with leave to amend by August 22, 2024.<sup>1</sup> The court warned  
12 the plaintiff that this case would be dismissed and closed if he failed to file an amended  
13 complaint by that deadline.<sup>2</sup> Plaintiff neither filed an amended complaint by that deadline nor  
14 moved for an extension of time to do so. But because plaintiff filed a notice of appeal, I  
15 considered alternatives to dismissal and reopened and extended the deadline for him to file an  
16 amended complaint to November 30, 2024.<sup>3</sup> Plaintiff, however, neither filed an amended  
17 complaint by that second deadline nor moved for an extension of time to do so.

18 The law permits a district court to dismiss an action based on a party's failure to comply  
19 with a court order.<sup>4</sup> In determining whether to dismiss an action on this ground, the court must  
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21 <sup>1</sup> ECF No. 11.

22 <sup>2</sup> *Id.* at 13.

23 <sup>3</sup> ECF No. 18.

<sup>4</sup> *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint).

1 consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to  
 2 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
 3 disposition of cases on their merits; and (5) the availability of less drastic alternatives.<sup>5</sup>

4 The first two factors, the public’s interest in expeditiously resolving this litigation and the  
 5 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The  
 6 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a  
 7 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading  
 8 ordered by the court or prosecuting an action.<sup>6</sup> The fourth factor—the public policy favoring  
 9 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the court to consider whether less drastic alternatives can be used  
 11 to correct the party’s failure that brought about the court’s need to consider dismissal.<sup>7</sup> Courts  
 12 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must  
 13 explore possible and meaningful alternatives.”<sup>8</sup> Because this action cannot proceed until and  
 14 unless plaintiff files an amended complaint, the only alternative is to enter a third order setting  
 15 another deadline. But the reality of repeating an ignored order is that it often only delays the  
 16 inevitable and squanders finite resources along the way. The circumstances here do not indicate

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18 <sup>5</sup> *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
 19 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

20 <sup>6</sup> *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

21 <sup>7</sup> *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less  
 22 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);  
 23 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the  
 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic  
 alternatives prior to disobedience of the court’s order as satisfying this element[.]” i.e., like the  
 “initial granting of leave to amend coupled with the warning of dismissal for failure to  
 comply[.]” have been “eroded” by *Yourish*).

<sup>8</sup> *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 that this case will be an exception. Setting another deadline is not a meaningful alternative given  
2 these circumstances. So the fifth factor favors dismissal.


3 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of  
4 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** for failure to  
5 file an amended complaint by the court-ordered deadline, leaving no claims pending. The Clerk  
6 of Court is directed to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE. No other**  
7 **documents may be filed in this now-closed case.**

8 IT IS FURTHER ORDERED that plaintiff's application to proceed *in forma pauperis*  
9 **(ECF No. 7) is GRANTED.** This status does not relieve plaintiff of the obligation to pay the  
10 full \$350 statutory filing fee, it just means that he can pay it in installments from his prison trust  
11 account. And the full filing fee remains due and owing even though this action is being  
12 dismissed.

13 IT IS FURTHER ORDERED that **the Nevada Department of Corrections must pay to**  
14 **the Clerk of the United States District Court, District of Nevada, 20% of the preceding**  
15 **month's deposits to the account of James Hill, #18769** (in months that the account exceeds  
16 \$10) until the full \$350 filing fee has been paid for this action.

17 The Clerk of Court is further directed to send a copy of this order to (1) the Finance  
18 Division of the Clerk's Office and (2) the attention of **Chief of Inmate Services for the Nevada**  
19 **Department of Corrections** at [formapauperis@doc.nv.gov](mailto:formapauperis@doc.nv.gov).

20 Dated: December 9, 2024

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22 U.S. District Judge Jennifer A. Dorsey  
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